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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,594	03/25/2004	C. J. David Nettleton	MAC 426-9	5614

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William A. Blake  
Jones, Tullar & Cooper, P.C.  
Eads Station  
P.O. Box 2266  
Arlington, VA 22202

EXAMINER

POLICOFF, STEVEN B

ART UNIT PAPER NUMBER

3728

DATE MAILED: 08/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/808,594	<b>Applicant(s)</b> NETTLETON, C. J. DAVID	
	<b>Examiner</b> Steven B. Pollicoff	<b>Art Unit</b> 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 May 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) 4-6, 19-21 and 24-31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 7-18, 22, 23, 32 and 33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Election/Restrictions*

Claims 4-6,19-21 and 24-31 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Invention II, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 5/18/06. Applicant's election without traverse of Invention I and Species III in the reply filed on 5/18/06 is acknowledged. Claims 1-3,7-18,22,23,32 and 33 are currently pending.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3,7-9,14,15,17,18,22 and 23 rejected under 35 U.S.C. 102(b) as being anticipated by DeHeras (US Pat 4,773,534).

With respect to claims 1,2,3,9, and 17, Deheras discloses a packaging system comprising a packaging (DeHeras Fig 3 ref 10), a pair of oppositely extending flaps bendable about the article (13',15'), a bendable reinforcing web laminated to and extending between the flaps (Fig 3 ref 35; see also column 2, lines 54-57), friction

Art Unit: 3728

material/cushioning blocks/foam disposed on a portion of the bendable reinforcing web (Fig 7, ref 38) engaging the article and constriction means for compressing the flaps to retain the article by friction (Fig 2 refs 11,17,20-23).

With respect to claims 7 and 22, DeHeras discloses that the packaging comprises a closeable box like enclosure (Fig 4 generally).

With respect to claims 8 and 23, the portion of the packaging in which the flaps are formed comprises a base unit (Fig 3 ref 10) capable of being received by a box like closure.

With respect to claims 14 and 18, DeHeras discloses that the packaging system is made from a multi-ply corrugated plastic (i.e. polypropylene column 2, lines 24-34; see also Fig 5 and 6), the corrugated portion being the parallel I-beams between ref 36 and 37.

With respect to claim 15, DeHeras discloses that the reinforcing web ref 35 is made of an anti-static polymer (column 2, lines 40-43). DeHeras also discloses that the packaging is made from a polypropylene (a polymer) that protects against static electricity. Therefore, the reinforcing web is certainly capable of being made from the disclosed polypropylene material.

Claims 1,7,8,10-14 and 32 are rejected under 35 U.S.C. 102(e) as being anticipate by Williams (US Pat 6,817,472).

With respect to claims 1,11,12 and 32, Williams discloses a packaging system for a radiator comprising packaging (Williams Fig 10) configured to receive the radiator therein, a pair of oppositely-extending flaps (25) formed in a portion of the packaging,

Art Unit: 3728

said flaps being bendable about opposed edges of the article and constriction means (Fig 10 ref 38) for compressing the flaps (i.e. at least one retention member/ band securable to itself) encircling the article exteriorly of the flaps against the edges of the radiator with sufficient force so as to retain the radiator therebetween by friction.

With respect to claims 7 and 8, Williams discloses that the packaging comprises a closeable, box-like enclosure (Fig 8 ref 50) and that the portion of the packaging in which the flaps are formed comprises a base unit configured to be received in the box-like enclosure.

With respect to claim 10, Williams discloses that cushioning spacers (Fig 10 ref 70) are positioned on a portion of the flaps which forms the exterior thereof when bent around the opposed edges of the article, said cushioning spacers being of sufficient thickness so as to abut an adjacent inner portion of the packaging.

Claim 13 is a product by process claim. A product by process limitation adds no patentable distinction to the claims, and is unpatentable if the claimed product is the same as a product of the prior art. In this case, Williams discloses that the band is secured to itself and therefore, how it is secured is not germane to the patentability of the product at issue.

With respect to claim 14, Williams discloses that the packaging is made at least in part from a material selected from the group consisting of: single-ply corrugated paperboard, single-ply corrugated cardboard, single-ply corrugated plastic, multi-ply corrugated paperboard, multi-ply corrugated cardboard, and multi-ply corrugated plastic (column 1, lines 21-26).

Art Unit: 3728

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over DeHeras (US Pat 4,773,534) in view of Warner et al (US Pat 5,058,745).

With respect to claim 10, DeHeras discloses all the limitation except cushioning spacers to abut an adjacent inner portion of a packaging. However, Warner discloses cushioning spacers abutting an outer packaging for the purpose of minimizing damage to the product in case of outer packaging puncture or the package being dropped (Warner column 4, lines 40-45). Therefore, it would have been obvious to one having ordinary skill in the art to modify the flaps of DeHeras to include cushion spacers, as taught by Warner, for the purpose of protecting the article when it is placed in an outer packaging.

Art Unit: 3728

Claims 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeHeras (US Pat 4,773,534) in view of Sullivan et al., (US Pat 4,865,200).

With respect to claims 11 and 12, DeHeras discloses all the limitations except for a band encircling the article exteriorly from the flaps. However, Sullivan discloses a packaging insert with flaps and a strap (i.e. band) encircling the article exteriorly from the flaps (Fig 4 ref 45) for the purpose of securing the article within the confines of the flaps (column 4, lines 49-54). Therefore, it would have been obvious to one having ordinary skill in the art to modify the constriction means to include a band encircling the article exteriorly of the flaps, as taught by Sullivan, for the purpose of better securing the article to the packaging insert.

Claim 13 is a product by process claim. A product by process limitation adds no patentable distinction to the claims, and is unpatentable if the claimed product is the same as a product of the prior art. In this case, Sullivan discloses that the band is secured to itself and therefore, how it is secured is not germane to the patentability of the product at issue.

Claims 16, 32 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeHeras (US Pat 4,773,534).

With respect to claim 16, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the bendable friction material made from polyethylene, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

Art Unit: 3728

With respect to claims 32 and 33, an article was not positively recited in the claims and claiming the article is merely modifying the intended use of the packaging system. The DeHeras package is certainly capable of holding articles such as a radiator. Therefore, claims 32 and 33 are rejected as merely modifying the intended use.

Claims 2 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williams (US Pat 6,817,472).

With respect to claim 2, Williams does not expressly teach a bendable reinforcing web laminated to and extending between the flaps. However, Williams does teach additional laminated materials attached to the packaging for additional packaging protection (Williams column 8, lines 27-34). Therefore, it would have been obvious to one having ordinary skill in the art to modify the area of the Williams packaging extending between the flaps to include additional laminated materials (i.e. reinforcing laminated web) extending between the flaps, as taught by Williams, to better protect the article being packaged. It further would have been obvious to include the protective additional laminated material in areas (i.e. between the flaps) that the article will be placed so as to ensure better protection of the article during storage or transport.

With respect to claim 15, Williams discloses that the packaging material may be made of polypropylene (column 1, lines 21-24) which would include the bendable reinforcing web area between the flaps. Therefore, the reinforcing web is capable of being made from polypropylene.



Claims 3,9,16-18,22,23 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williams (US Pat 6,817,472) in view of Mykleby (US Pat 4,339,039).

With respect to claims 3,9,16 and 17, Williams discloses all of the limitations of the claim except cushioning blocks/bendable friction material being disposed on the portion of the packaging in which the flaps are formed so as to abut against a surface of the article extending between the opposed edges. However, Mykleby discloses cushioning blocks (Mykleby Fig 2, ref 10) made of any polymeric foam material (i.e. polyethylene column 3, lines 63-66) being disposed on a portion of a packaging in which flaps (Fig 15) are formed so as to abut against a surface of an article extending between opposed edges for the purpose of preventing damage to the article during shipment (column 1, lines 9-11). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the flaps of Williams to include cushioning blocks/bendable friction material adjacent the article being retained in the package, as taught by Mykleby, for the purpose of providing better support against external forces during transit and storage or mishandling.

With respect to claim 18, see rejection of claim 14 above.

With respect to claims 22 and 23, see rejection of claims 7 and 8 above.

With respect to claim 33, see rejection of claim 32 above.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892 attached below.

Art Unit: 3728

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven B. Pollicoff whose telephone number is (571)272-7818. The examiner can normally be reached on M-F: 7:30A.M.-4:00P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571)272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KBP 8/1/06  
SBP

  
JILA M. MOHANDESI  
PRIMARY EXAMINER